

PART 2100—ARMED FORCES RETIREMENT HOME PRIVACY ACT PROCEDURES

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AUTHORITY: Public Law 93-579, 88 Stat. 1896, 5 U.S.C. 552a(f).

SOURCE: 59 FR 30669, June 15, 1994, unless otherwise noted.

§ 2100.1 Purpose.

Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the following rules of procedures are established with respect to access and amendment of records maintained on the individual subjects of these records by the Armed Forces Retirement Home, which includes the continuing care retirement communities of the U.S. Soldiers' and Airmen's Home and the U.S. Naval Home. These rules do not apply to civilian employees' records maintained by the individual facilities which are covered by the Office of Personnel Management systems of records.

§ 2100.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a, as amended, shall have the same meaning herein.

(b) *Agency*, as used in this part, means the Armed Forces Retirement Home (AFRH).

(c) *Facility* or *facilities* refers to the continuing care retirement communities of the U.S. Soldiers' and Airmen's Home (USSAH) and the U.S. Naval Home (USNH), which are incorporated within the Armed Forces Retirement Home (AFRH).

(d) *Access* means providing a copy of a record to, or allowing review of the original record by, the individual or the individual's authorized representative, legal guardian or conservator.

§ 2100.3 Procedure for requesting information.

Individuals shall submit written inquiries regarding all AFRH records to the appropriate facility at the following addresses: Associate Director, Resource Management, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317-0002; or, Administrative Services, U.S. Naval Home, 1800 Beach Drive, Gulfport, Mississippi 39507-1597. All personal (walk-in) requests will require some form of common identification.

§ 2100.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Individuals must provide their full name and as much information as possible in order that a proper search for records can be accomplished. Requests made by mail shall be signed by the individual requesting his/her records. Inclusion of a telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph, such as a driver's license, military or annuitant identification card, or any official document as acceptable identification validation. Personal requests can only be accepted on regularly scheduled workdays (Monday through Friday, excluding Federal holidays) between the hours of 7:30 a.m. and 3:30 p.m.

§ 2100.5 Access by individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil actions or proceedings, or otherwise exempt under § 2100.12. Requests for pending investigations will be denied and the requester instructed to

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forward another request giving adequate time for the investigation to be completed. Requesters shall be provided the telephone number so they can call and check on the status in order to know when to resubmit the request.

(b) Any individual may authorize the facility to provide a copy of his/her records to a third party. This authorization must be in writing and shall be provided to the facility with the initial request.

(c) Access to records may be authorized to the legal guardian or conservator acting on behalf of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) When an individual requesting access to his/her record wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(e) If medical records are requested and a USSAH or USNH practitioner believes that access to the records by the subject could harm that person's mental or physical health, the requester will be asked to name a practitioner to receive the records. If this requirement poses a hardship on the individual, he/she will be offered the service of an USSAH or USNH practitioner other than the one who provided treatment. If the individual refuses to name a recipient, the record will not be released.

§2100.6 Schedule of fees.

(a) Individuals will not be charged for:

(1) The search and review of the record.

(2) Copies of the record produced as a necessary part of the process of making the record available for access; or,

(3) Copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) Waiver. The official having operational control at the appropriate facility may at no charge, provide copies

of a record if it is determined the production of the copies is in the interest of the Government.

(c) Fee Schedule and method of payment. With the exception of paragraphs (a) and (b) of this section, fees will be charged as indicated below:

(1) Records will be duplicated at a rate of \$.10 per page for all copying of 5 pages or more. There is no charge for duplication of 4 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$30.00, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed \$30.00, an advance deposit may be required. The notice or request for advance deposit shall extend an offer to the requester in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requested copies, no subsequent request will be processed until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check, bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the facility to which the request is being made, and mailed or delivered to the appropriate facility (see §2100.3 of this part).

(5) A receipt for fees paid will be given upon request.

§2100.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for the amendment. The request should also include the reasons why the requester believes the record is not accurate, relevant, timely, or complete. The burden of proof will be upon the individual to furnish sufficient facts to persuade the change of the

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record of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record. Normally all documents submitted, to include court orders, shall be certified. Amendments under this part are limited to correcting factual matters and not matters of official judgement or opinions.

(b) Requirements of identification as outlined in §2100.4 apply to requests to correct or amend a file.

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) When records sought to be amended are actually covered by another issuance, the administrative procedures under that issuance must be exhausted before using the procedures under the Privacy Act.

§2100.8 Review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgment.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the system manager in which the file is located.

(c) Where there is a determination to deny all or a portion of a request to amend a record, a designated official will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s).

§2100.9 Appeal of denial to grant access or to amend records.

(a) All appeals of denial to grant access or to amend records should be addressed to the appropriate facility at the following addresses: Associate Director, Resource Management, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317-0002; or, Administrative Services, U.S. Naval Home, 1800 Beach Drive, Gulfport, Mississippi 39507-1597. The appeal should be concise and should specify the reasons the requester believes that the initial action was not satisfactory. If an appeal is denied, the designated official will notify the requester of the reason for denial and of the right to judicial review pursuant to 5 U.S.C. 552a(g). If an initial denial of a request to amend records is upheld, the requestor will also be advised of his or her right to file a statement of dispute disagreeing with the denial and such statement will be provided to all future users of the file.

(b) If the designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a Federal district court to contest the decision not to amend the record.

(c) The designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§2100.10 Conditions of disclosure and accounting of certain disclosures.

No record containing personally identifiable information within an AFRH system of records shall be disclosed by any means to any person or agency outside the AFRH, except by written request or prior written consent of the individual subject of the record, or as provided for in the Privacy Act of 1974,

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as amended, unless when such disclosure is:

(a) To those officers and employees of the agency which maintains the record and who have a need for the record in the performance of their duties;

(b) Required under 5 U.S.C. 552;

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to 13 U.S.C.;

(e) To a recipient who has provided the AFRH with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Archivist of the United States, or his/her designee, to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality, has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

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(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§2100.11 Penalties.

(a) An individual may bring a civil action against the AFRH to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the AFRH from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1)(C) or (D), the United States may be liable for the actual damages sustained.

(c) Criminal penalties may be imposed against an officer or employee of the USSAH or USNH who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed \$5,000.

§2100.12 Accounting of disclosure.

(a) The AFRH or agency will maintain a record of disclosures in cases where records about the individual are disclosed from a system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended; or

(2) When the disclosure is made to those officers and employees of the AFRH who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for a least 5 years or for the life of the record, whichever is longer, and will contain the following information:

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(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and,

(3) The name and address of the person, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the AFRH exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

§ 2100.13 Specific exemptions.

Subsection (k) of 5 U.S.C. 552a authorizes the AFRH to adopt rules designating eligible system of records as exempt from certain requirements of 5 U.S.C. 552a. To be eligible for a specific exemption under the authority of 5 U.S.C. 552a(k), the pertinent records within a designated system must contain one or more of the following:

(a) Investigative records compiled for law enforcement purposes. If this infor-

mation has been used to deny someone a right however, the AFRH must release it unless doing so would reveal the identify of a confidential source ((k)(2) exemption).

(b) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(c) Data compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(d) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).